

record. The Court held, in effect, that Congress may not exercise its power pursuant to the Fourteenth Amendment unless it justifies itself, in advance, to the satisfaction of the federal courts. This demonstrates a breathtaking lack of respect for a co-equal branch of Government. Congress is not an administrative agency, and it should not be required to dot every "i" and cross every "t" before taking action in the public interest.

The Court's "no-deference" approach could complicate a broad range of current legislative initiatives. I will note just two that are of critical importance to me: civil rights and intellectual property.

The Religious Liberty Protection Act, which was recently reported by the House Judiciary Committee, is an important congressional effort to protect religious liberty after the Court struck down our previous attempt in the 1997 City of Boerne case. To the extent that any new bill rests on our authority under the Fourteenth Amendment, we must now do the work of an administrative agency to develop an evidentiary record that will satisfy the Supreme Court.

The end-of-term decisions will also make it harder for Congress to design a uniform system that will apply throughout the nation to protect important intellectual property interests. Intellectual property rights are deeply rooted in the Constitution, which provides in Article I that "The Congress shall have power . . . [t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." I have worked hard over the years to provide the creators and inventors of copyrighted and patented works with the protection they may need in our global economy.

Yet, the Court's decisions will have far-reaching consequences about how these intellectual property rights may be protected against even egregious infringements and violations by the States. For example, in light of the Court's decisions, will Congress now have to write one law for private universities, libraries and educational institutions, while State-run institutions are free to do whatever they please. This is a matter that Chairman HATCH and I will have to examine closely in the Judiciary Committee as we consider a host of intellectual property matters ranging from distance education, database protection, cyberpiracy of domain names, and others.

The Court's new conception of federalism poses an interesting challenge to Congress. Over the coming years, we can expect a flurry of lawsuits aimed at testing the limits of last week's rulings and of this body's legislative authority. In fact, the Court has already agreed to decide next term whether States are immune from suits charging that they have violated the federal law

against age discrimination and whether they may be sued for defrauding the federal government.

I have risen to discuss the Court's end-of-term decisions for two reasons. First, I agree with the four dissenting Justices that these decisions are an egregious case of judicial activism and a misapplication of the Constitution. The four dissenters expressed their belief that the Court's new direction will eventually be reversed. I hope this is so. In the interim, however, we need to determine what means remain to Congress to fulfill the promise of the Constitution, which guarantees national supremacy to federal law and to federally-protected rights.

At least three paths remain open to us. First, Congress can require States to waive their immunity from suit as a condition of receiving federal funds. Second, since the States are not immune from suit by the federal Government, Congress can empower federal authorities to collect damages on behalf of private citizens whose federal rights have been violated by States. Third, Congress can give more emphasis to preventative remedies, since nothing in the Court's decisions affects the ability of individuals to sue States for injunctive relief.

I urge all Senators to study the Court's decisions. We need to work together with a clear understanding of the Court's new constitutional order.

#### KAREN SCHREIER'S CONFIRMATION AS UNITED STATES FEDERAL DISTRICT JUDGE FOR SOUTH DAKOTA

Mr. JOHNSON. Mr. President, I rise to express my appreciation of my colleagues for their overwhelming and bipartisan support for confirmation of Karen Schreier as a United States Federal District Judge for South Dakota. Karen Schreier has established an extraordinary reputation for skill and integrity during her years of private law practice, and as a very successful United States Attorney.

It is of historic note, that Karen is about to become the first female federal judge in South Dakota's 110-year history, and her outstanding achievements as an attorney, community leader, and federal judge will serve as a model for countless other talented young people throughout our state—both men and women. Most importantly, however, her ascension to the federal bench is a victory for justice and the rule of law. South Dakota and our nation will be very well served by Karen Schreier's tenure as Federal District Judge for South Dakota.

I also must observe that even the most talented of individuals does not achieve the highest career success without the support and assistance of other important people in their lives. I had the great honor and pleasure of serving in the South Dakota legislature with Karen's father, Harold Schreier. Harold represented the very

best of public service in our state, and I know that Karen's success would be of enormous pride and satisfaction to him. Karen's mother, Maysie Schreier, has been a wonderful resource in the Flandreau community in her own right, and her values and determination are reflected in her daughter. Karen's husband, Tim Dougherty, is a talented lawyer, community leader and source of never-ending support and encouragement. Tim's father, Bill Dougherty, has for many years been one of South Dakota's foremost political leaders and voice for common-sense and progressive public policy. Bill has been the father of a great deal of legislative accomplishment in our state, but I have a feeling that Karen's success will always be one of his greatest sources of pride.

Mr. President, it is with wonderful personal satisfaction, that I can today offer my congratulations to Karen Schreier on her confirmation. Congratulations as well, to the Schreier and Dougherty families—outstanding South Dakota families, and valued personal friends!

#### SILVERY MINNOW—CRITICAL HABITAT DESIGNATION

Mr. DOMENICI. Mr. President, I rise today to discuss recent developments regarding the Rio Grande River in New Mexico, an endangered species called the silvery minnow, and praiseworthy action by the Senate Environment and Public Works Committee earlier this week.

As I have previously outlined before to my colleagues, a complicated and potentially chaotic situation involving literally hundreds of thousands of water users along the Rio Grande in my state could emerge this year. Yesterday, the Fish and Wildlife Service designated almost 170 miles of the Rio Grande channel as critical habitat for the silvery minnow. This designation, as Secretary of Interior Bruce Babbitt testified earlier this year, is prematurely driven by a court order before the needs of the minnow and economic impacts are known. Indeed, this is a "cart before the horse" situation that would be comical if its consequences weren't potentially so tragic.

In light of this situation, the action by the Senate Environment and Public Works Committee Tuesday is heartening in two respects. First, I want to profoundly thank Senator CHAFEE, chairman of the committee; Senator BAUCUS, ranking member; and Senator CRAPO, chairman of the relevant subcommittee, and their staffs, for their help on S. 1100, a precisely crafted bill that would bring a logical and commonsense reform to the present Endangered Species Act. Second, I also thank the various environmental organizations and their staffs that helped us in this effort. This was a unique, bipartisan undertaking. I think the committee's work shows that intelligent reform can occur in this highly charged

arena. I will do all I can to assist in "clean" passage of this legislation, without the burden of multiple amendments that will fracture the consensus that has developed.

S. 1100 simply requires that the designation of critical habitat for an endangered species occur, in the future, after the scientific work necessary to develop a comprehensive recovery plan for that species is completed. That sounds logical to my colleagues, I suspect, but the present Endangered Species Act provides for just the opposite: that is, it requires a designation of habitat before science has told us what a species needs to survive.

I have been asked what relationship exists between S. 1100 and the Rio Grande/silvery minnow situation. The answer will clearly depend on how the courts resolve this particular case. However, S. 1100 provides that designation of critical habitat should occur concurrently with the development of a recovery plan. That is a significant step forward, but only a first step. It will prevent the situation now found on the Rio Grande in the future.

A court has forced the Fish and Wildlife Service to prematurely designate critical habitat, a premature designation that everyone agrees could be counter-productive. Mr. President, you know that a full Environmental Impact Statement is required by law in the case of a "major federal action." If any case cries out for a full EIS, it is the case of the silvery minnow. The potential impact of this federal action by the Fish and Wildlife Service, compelled by the court, could have consequences well beyond the normal definition of the word "major." At stake is the water, literally the water used every second of every day by all users of the Rio Grande system. Unfortunately, even with legal precedent on the need for an EIS in habitat designations, the Fish and Wildlife Service chose not to do one.

Some try to portray this particular case as one dividing farmers and ranchers from the more extreme environmentalists in our state, a situation described quite accurately and colorfully by Secretary Babbitt earlier this year as "intransigence." Yet, this issue is much broader than that kind of confrontation: hundreds of thousands of users, people who depend upon the Rio Grande for their water in their taps at home, residents of Santa Fe and Albuquerque, and the communities in between, could find their water endangered.

In light of this potential, I believe that a full-scale Environmental Impact Statement must be done on the silvery minnow issue. It is only after we know the impact that critical habitat designation may have on all users, and its relationship to saving the species, that we can intelligently move forward.

#### A BUDGET SURPLUS TO REFORM AMERICA'S PUBLIC SCHOOLS

Mr. KERRY. Mr. President, I want to spend a few moments today to talk about one of the great questions to which I believe the Senate has yet to take a stand. That is the question of reform of our public school system. And Mr. President, I would suggest that today the responsibility to be creative, to be resourceful, and to empower our schools resides right here in the United States Senate.

I am grateful that President Clinton has recently taken a position a number of us have advocated in this age of budget surpluses. Now it's time for all of us to acknowledge that some proportion of these projected budget surpluses should be set aside for education reform—set aside in a lockbox. And, Mr. President, I would suggest that we should all be able to agree that any budget we conclude this year—if it is a budget that reflects the American people's most urgent need—must include more funding for school reform.

Let's be honest—as a society, there is no decision of greater importance to the long term health, stability, and competitiveness of this nation than the way we decide to educate our children. We look to public schools today to educate our children to lead in an information age and a global economy where borders have vanished—and the wealth of nations will be determined by the wisdom of their workers—by their level of training, the depth of their knowledge, and their ability to compete with workers around the world.

Mr. President, two hundred years ago Thomas Jefferson told us that our public schools would be "the pillars of the republic"—he was right then, he is right now—but today there is a caveat: those public schools must also be—more than ever—the pillars of our economy and the pillars of our communities.

And I would respectfully suggest to you that there has not been a more urgent time than the present to reevaluate the way America's greatest democratic experiment is working—the experiment of our nation's public schools.

Those pillars of the republic have never before had to support so heavy a burden as they do today. In our world of telecommuting; the Internet; hundreds and soon thousands of television channels; sixty, seventy and eighty hour work weeks—there are fewer and fewer places where Americans come together in person to share in that common civic culture, fewer ways in which we unite as citizens. And more reasons, I believe, why this nation must have a great public school system.

And what can we say of the system before us today? I think we must say that—although there are thousands of public schools in this country doing a magnificent job of educating our children to a world class level—too many of our schools are struggling and too many kids are being left behind.

I believe we have a responsibility to be the true friends of public edu-

cation—and the best friends are critical friends, and it is time that we seek the truth and offer our help to a system that is not doing enough for a large proportion of the 50 million children in our public schools today—children whose reading scores show that of 2.6 million graduating high school students, one-third are below basic reading level, one-third are at basic, only one-third are proficient and only 100,000 are at a world class reading level; children who edge out only South Africa and Cyprus on international tests in science and math, with 29 percent of all college freshmen requiring remedial classes in basic skills.

This year we have already passed the Ed-Flex Bill, a step forward in giving our schools the flexibility and the accountability they need to enact reform, making it a matter of law that we won't tie their hands with red tape when Governors and Mayors and local school districts are doing all they can to educate our kids, but also emphasizing that with added flexibility comes a responsibility to raise student achievement.

But EdFlex was just one step to balance accountability and flexibility—to continue the process of real education reform—and that is why my colleague, the Senator from Oregon, GORDON SMITH, and I have come together, in a bipartisan way—through the Kerry-Smith approach to education reform we've introduced with TED KENNEDY, MAX CLELAND, EVAN BAYH, JOHN EDWARDS, CARL LEVIN, PATTY MURRAY, RICHARD BRYAN, as well as JOHN CHAFEE, SUSAN COLLINS and OLYMPIA SNOWE from Maine. Ours is an approach which will make a difference in our schools and which can bring together leaders from across the political spectrum around good ideas which unite us.

For too long in this country the education debate has been stuck both nationally and locally. Leaders have been unable or unwilling to answer the challenge, trapped in a debate that is little more than an echo of old and irrelevant positions with promising solutions stymied by ideology and interest groups—both on the right and on the left.

Nowhere more than in the venerable United States Senate, where we pride ourselves on our ability to work together across partisan lines, have we—in so many debates—been stuck in a place where Democrats and Republicans seem to talk past each other. Democrats are perceived to be always ready to throw money at the problem but never for sufficient accountability or creativity; Republicans are perceived as always ready to give a voucher to go somewhere else but rarely supportive of investing sufficient resources to make the public schools work.

Well, I think it is in this Congress, this year, that we can finally disengage ourselves from the political combat, and acknowledge that with so much on the line, such high stakes in our schools, you can't just talk past each other and call it reform.